

By Mr. Keating, petition (accompanied by bill, Senate, No. 143) of William R. Keating, William C. Galvin, Paul D. Harold, Kevin G. Honan, Michael W. Morrissey, Louis L. Kafka and other members of the House of Representatives for legislation relative to prevention and penalties for criminal street gang activity. Criminal Justice.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT RELATIVE TO STREET GANG ENFORCEMENT AND PREVENTION ACT.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 The Massachusetts General Laws are hereby amended by  
2 adding the following Chapter 265A:

3 **STREET GANG ENFORCEMENT**  
4 **AND PREVENTION ACT.**

5 Section 1(a). As used in this chapter, "pattern of criminal gang  
6 activity" means the commission, attempted commission or  
7 solicitation of two or more of the following offenses, provided at  
8 least one of those offenses occurred within three years after a prior  
9 offense and the offenses are committed on separate occasions or  
10 by two or more persons:

11 (1) Armed or unarmed robbery or assault with intent to rob  
12 as defined in Chapter 265.

13 (2) Unlawful homicide or manslaughter as defined in chap-  
14 ter 265.

15 (3) Other crimes against the person as defined in chapter 265.  
16 sections 13-29.

17 (4) The manufacture, distribution, dispensing or possessing  
18 with intent to manufacture, distribute or dispense or trafficking  
19 in a controlled substance as defined in Chapter 94C.

20 (5) Arson, Burglary, Breaking and Entering, Malicious  
21 Destruction and Malicious Explosion as defined in Chapter 266.

22 (6) Intimidation of a witness or juror as defined in chapter 268.

23 (b) As used in this chapter, "criminal street gang" means any  
24 ongoing organization, association or group of three or more  
25 persons, whether formal or informal, having as one of its primary  
26 activities the commission of one or more of the criminal acts  
27 enumerated in paragraphs (1) to (6) inclusive of section 1, of which  
28 has a common name or common identifying sign or symbol whose  
29 members individually or collectively engage in or have engaged  
30 in a pattern of criminal gang activity.

31 (a) Section 2. Any person who actively participates in any  
32 criminal street gang with knowledge that its members engage in  
33 or have engaged in a pattern of criminal gang activity and who  
34 willfully promotes, furthers, or assists in any felonious criminal  
35 conduct by members of that gang shall be punished by  
36 imprisonment in jail or house of correction for a period of not  
37 more than two years or by imprisonment in the state prison for  
38 not more than ten years.

39 (b) Any person who is convicted of a felony or a misdemeanor  
40 which is committed for the benefit of, at the direction of or in  
41 association with any criminal street gang with the specific intent  
42 to promote, further, or assist in any criminal conduct by gang  
43 members shall be punished in the following manner:

44 (1) Any person who is convicted of a misdemeanor shall be  
45 punished by imprisonment in a jail or house of correction for a  
46 period not to exceed two and one-half years.

47 (2) Except as provided in paragraph (3), any person who is  
48 convicted of a felony shall, upon conviction of that felony, in  
49 addition to the punishment prescribed for the felony of which he  
50 or she has been convicted, be punished by an additional term of  
51 imprisonment in a jail or house of correction for period not to  
52 exceed two and one half years and in state prison for a period  
53 not to exceed twenty years. The sentence imposed upon such  
54 person shall not be reduced to less than one year nor suspended  
55 nor shall any person convicted under this paragraph (a) be eligible  
56 for probation, parole, or furlough or receive any deduction from  
57 his sentence for good conduct until he shall have served one year  
58 of such sentence, provided, however, that the commissioner of

59 correction may, on the recommendation of the warden,  
60 superintendent, or other person in charge of a correctional  
61 institution, or the administrator of a county correctional  
62 institution, grant to an offender committed under this paragraph  
63 a temporary release in the custody of an officer of such institution  
64 for the following purposes only: to attend the funeral of a relative;  
65 to visit a critically ill relative; or to obtain emergency medical or  
66 psychiatric services unavailable at said institution. Prosecutions  
67 commenced under this section shall neither be continued without  
68 a finding nor placed on file.

69 The provision of section eighty-seven of chapter two hundred  
70 and seventy-six shall not apply to any person seventeen years of  
71 age or over, charged with a violation of this paragraph or to any  
72 child between age fourteen and seventeen, so charged, if the court  
73 is of the opinion that he interests of the public require that he  
74 should be tried for such offense instead of being dealt with as a  
75 child.

76 (3) Any person who is convicted of a felony punishable by  
77 imprisonment in the state prison for life, shall not be paroled until  
78 a minimum of ten years have been served.

79 The sentence imposed upon such person shall not be reduced  
80 to less than fifteen years, nor suspended, nor shall any person  
81 convicted under this paragraph (a) be eligible for probation,  
82 parole, or furlough or receive any deduction from his sentence  
83 for good conduct until he shall have served fifteen years of such  
84 sentence, provided, however, that the commissioner of correction  
85 may, on the recommendation of the warden, superintendent, or  
86 other person in charge of a correctional institution, or the  
87 administrator of a county correctional institution, grant to an  
88 offender committed under this paragraph a temporary release in  
89 the custody of an officer of such institution for the following  
90 purposes only: to attend the funeral of a relative; to visit a critically  
91 ill relative; or to obtain emergency medical or psychiatric services  
92 unavailable at said institution. Prosecutions commenced under  
93 this section shall neither be continued without a finding nor placed  
94 on file.

95 The provisions of section eighty-seven of chapter two hundred  
96 and seventy six, shall not apply to any person seventeen years of  
97 age or over, charged with a violation of this paragraph, or to any

98 child between age fourteen and seventeen, so charged, if the court  
99 is of the opinion that the interests of the public require that he  
100 should be tried for such offense instead of being dealt with as a  
101 child.

102 Section 3 (a). Every building or place, other than residential  
103 buildings in which there are three or fewer dwelling units, used  
104 by members of a criminal street gang for the purpose of the  
105 commission of the offenses listed in section 1 and every building  
106 or place other than residential buildings in which there are three  
107 or fewer dwelling units wherein or upon which that criminal  
108 conduct by gang members takes place is a nuisance which shall  
109 be enjoined, abated and prevented and for which damages may  
110 be recovered.

111 (b) Any action for injunction or abatement filed pursuant to  
112 this section shall proceed according to the provisions of  
113 chapter 139, sections 16-20 except that all of the following shall  
114 apply:

115 (1) The court shall not assess a civil penalty against any person  
116 unless that person knew or should have known of the unlawful  
117 acts.

118 (2) All injunctions issued shall be limited to those necessary to  
119 protect the health and safety of the residents or the public or those  
120 necessary to prevent further criminal activity.

121 (3) Suit may not be filed until 30-day notice of the unlawful  
122 use or criminal conduct has been provided to the owner by mail,  
123 return receipt requested, postage prepaid to the last known  
124 address.

125 (c) No nonprofit or charitable organization which is conducting  
126 its affairs with ordinary care or skill and no governmental entity  
127 shall be abated pursuant to this chapter.

128 (d) Nothing in this chapter shall preclude any aggrieved person  
129 from seeking any other remedy provided by law.

130 Section 4. This chapter does not apply to employees engaged  
131 in concerted activities for their mutual aid and protection or the  
132 activities of labor organizations or their members or agents.

133 Section 5. If any part or provision of this chapter or the  
134 application thereof to any person or circumstance is held invalid,  
135 the remainder of the chapter, including the application of that part  
136 or provision to other persons or circumstances shall not be

137 affected thereby and shall continue in full force and effect. To this  
138 end, the provisions of this chapter are severable.

139 Section 6. Nothing in this chapter shall prevent a local  
140 governing body from adopting and enforcing laws consistent with  
141 this chapter relating to gangs and gang violence. Where local laws  
142 duplicate or supplement this chapter, this chapter shall be  
143 construed as providing alternative remedies and not as preempting  
144 the field.





